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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/772,945	02/04/2004	Peter J. Fricke	200310842-1	5316

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EXAMINER	
NADAV, ORI	

ART UNIT	PAPER NUMBER
2811	

DATE MAILED: 08/04/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)
	10/772,945	FRICKE ET AL.
	Examiner	Art Unit
	Ori Nadav	2811

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *15 June 2006*.

2a)☐ This action is **FINAL**. 2b)☒ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1-6,8-33 and 36-59* is/are pending in the application.

4a) Of the above claim(s) *2,12-15,17-25,36,37,42-46 and 50-54* is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *1,3-6,8-11,16,26-33,38-41,47-49 and 55-59* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date _____.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____.
5) ☐ Notice of Informal Patent Application (PTO-152)
6) ☐ Other: _____.

DETAILED ACTION

Claim Rejections - 35 USC § 112

The following is a quotation of the second paragraph of 35 U.S.C. 112:

> **The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.**

Claims 26-33, 38-41, 47-49 and 55-57 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. The claimed limitations of forming a storage layer and forming a layer of silicon-rich insulator, as recited in claims 26, 38, 47 and 55, are unclear as to the structural relationship between the storage layer, the layer of silicon-rich insulator, and the memory cell.

The claimed limitations of a second conductive layer being at least partially aligned with the middle electrode, as recited in claims 47 and 55, and memory cells of each set being at least partially aligned vertically with each other, as recited in claim 30, are unclear as to whether the second conductive layer is aligned or not aligned with the middle electrode, and how two elements can be partially aligned.

The claimed limitation of forming a second interlayer dielectric layer, as recited in claims 47 and 55, is unclear as to the structural relationship between the second interlayer dielectric layer and the memory cell.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

Claims 1, 3-6, 8-11,16, 26-33, 38-41, 47-49 and 55-59, as best understood, are rejected under 35 U.S.C. 103(a) as being unpatentable over Miyasaka (4,476,547) in view of Udayakumar et al. (2005/0012126).

Miyasaka teaches in figure 5 and related text a memory array comprising:

a) a multiplicity of row conductors WL and a multiplicity of column conductors BL, the row conductors and column conductors being arranged to cross at cross-points, and

b) a memory cell C disposed at each cross-point, each memory cell having exactly two terminals and having a storage element and a control element coupled in series between a row conductor and a column conductor (column 1, lines 63-67).

Miyasaka does not teach that each control element including a silicon-rich oxide insulator.

Udayakumar et al. teach in figure 7F and related text a memory cell Cfe having exactly two terminals and having a storage element and a control element wherein the control element including a silicon-rich oxide insulator SILOX2.

It would have been obvious to a person of ordinary skill in the art at the time the invention was made to use a silicon-rich oxide insulator in each control element of Miyasaka's device in order to improve the characteristics of the device. The

combination is motivated by the teachings of Miyasaka, who points out the advantages of using a silicon-rich oxide insulator.

Regarding claim 4, prior art's device includes the silicon-rich insulator of each memory cell is electrically isolated from the silicon-rich insulators of all other memory cells.

Regarding claims 5-6 and 8-10, it would have been obvious to a person of ordinary skill in the art at the time the invention was made to use a control element of each memory cell comprises a tunnel junction, and the storage element of each memory cell comprises an anti-fuse, a fuse, a tunnel junction, a state-change layer, a chalcogenide, in prior art's device in order to use known memory control and storage elements, of which official notice is taken.

Regarding claim 11, Miyasaka teaches in figure 5 and related text a row conductors are arranged in mutually orthogonal relationship with the column conductors.

Regarding claim 16, prior art's device includes a memory cell disposed at each cross-point, each memory cell comprising means for storing data and means for controlling the means for storing data, the means for storing data and means for controlling being coupled in series between a row conductor and a column conductor, and each means for controlling including a silicon-rich insulator.

Regarding claim 26, prior art's device includes a tunnel-junction layer SiN over the silicon rich insulator and a second conductive layer 128 over the tunnel-junction layer. Prior art does not state that the memory cell is formed by a method of

b) depositing and patterning a first conductive layer over the substrate, and

c) forming and patterning a second conductive layer,

However, these process limitations would not carry patentable weight in this claim drawn to a structure, because distinct structure is not necessarily produced.

Note that a "product by process" claim is directed to the product per se, no matter how actually made, In re Hirao, 190 USPQ 15 at 17 (footnote 3). See also In re Brown, 173 USPQ 685; In re Luck, 177 USPQ 523; In re Fessmann, 180 USPQ 324; In re Avery, 186 USPQ 161; In re Wertheim, 191 USPQ 90 (209 USPQ 554 does not deal with this issue); and In re Marosi et al., 218 USPQ 289, all of which make it clear that it is the patentability of the final product per se which must be determined in a "product by process" claim, and not the patentability of the process, and that an old or obvious product produced by a new method is not patentable as a product, whether claimed in "product by process" claims or not. Note that the applicant has the burden of proof in such cases, as the above case law makes clear.

Regarding claim 38, prior art's device includes a first interlayer dielectric over the storage layer (122 in Udayakumar et al., figure 7F), and having an opening through the first interlayer dielectric and extending to the storage layer, and having a conductive

material therein as a middle electrode 124, this conductive layer is contiguous with the storage layer.

Prior art does not state that the memory cell is formed by a method of

b) depositing and patterning a first conductive layer over the substrate, and

c) forming and patterning a second conductive layer,

d) forming and patterning first and second interlayer dielectrics over the storage layer,

e) forming an opening through the first interlayer dielectric and extending to the storage layer,

g) filling the opening through the first interlayer dielectric with conductive material to form a middle electrode.

However, these process limitations would not carry patentable weight in this claim drawn to a structure, because distinct structure is not necessarily produced.

Regarding claims 30, 47 and 55, prior art's device includes a second interlayer dielectric (126 in Udayakumar et al., figure 7F), is formed over the storage layer, forming vias as required though the second interlayer dielectric to selectively interconnect memory cells of the memory arrays.

Prior art does not state that the memory cell is formed by a method of

b) depositing and patterning a first conductive layer over the substrate, and

c) forming and patterning a second conductive layer,

d) forming and patterning first and second interlayer dielectrics over the storage layer,

e) forming an opening through the first interlayer dielectric and extending to the storage layer,

g) filling the opening through the first interlayer dielectric with conductive material to form a middle electrode.

k) forming vias as required though the second interlayer dielectric, and repeating steps b) through k) until a desired number of memory array layers have been formed.

However, these process limitations would not carry patentable weight in this claim drawn to a structure, because distinct structure is not necessarily produced.

Regarding claims 27-29, 31-33, 39-41, 48-49 and 56-57, Miyasaka teaches a memory array comprising a multiplicity of the memory cells, a substrate carrying electronics and an IC comprising a multilayer memory, wherein a multiplicity of the memory arrays are arranged in memory layers.

Regarding claims 58-59, Miyasaka teaches in figure 5 and related text the two terminals of the two terminal memory cell disposed at each cross-point comprise the row conductor and column conductor respectively.

Response to Arguments

Applicant argues that there is noting unclear in claims 26-33, 38-41, 47-49 and 55-57, because the drawings clearly depict the structure.

Although the drawings clearly depict the structure, claims 26-33, 38-41, 47-49 and 55-57, are unclear because the structural relationship between the various elements is unclear, and an artisan would not know how to make the claimed device.

The rest of applicant's arguments with respect to claims have been considered but are moot in view of the new ground(s) of rejection.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Ori Nadav whose telephone number is 571-272-1660. The examiner can normally be reached between the hours of 7 AM to 4 PM (Eastern Standard Time) Monday through Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Eddie Lee can be reached on 571-272-1732. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

O.N.
7/28/06

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